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Postal Services Bill: Committee Stage Report

Bill 120 of 2010-11 (as amended; Bill 78 as introduced)

RESEARCH PAPER 11/01 07 January 2011

The *Postal Services Bill* passed Second Reading in the Commons on 27 October. The Bill was considered in Public Bill Committee in 20 sittings, between 9 November and 9 December 2010. No Opposition amendments were agreed and only minor Government amendments were made to Clause 80 in Part 4 of the Bill.

This Paper summarises all Commons stages and supplements House of Commons Library Research Paper 10/67: *Postal Services Bill*, which was produced for the Bill's Second Reading.

Report Stage and Third Reading are scheduled for 12 January 2011.

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Acronyms used

BEC	Business and Enterprise Committee
BERR	Department for Business Enterprise & Regulatory Reform
BIS	Department for Business, Investment and Skills
CAT	Competition Appeal Tribunal
DMA	Direct Marketing Association
IMRG	Internet Media and Retail Group
IPO	Initial Public Offer
RMG	Royal Mail Group
RMPP	Royal Mail Pension Plan
POL	Post Office Ltd
PON	Post Office Network
POPS	Post Office Pension Scheme
POSSS	Post Office Staff Superannuation Scheme
USO	Universal Service Obligation
USP	Universal Service Provider
TISC	Trade and Industry Departmental Select Committee
TUPE	*Transfer of Undertakings (Protection of Employment) Regulations 2006*

Summary

The 2008 Hooper Review recommended a package of measures to modernise the Royal Mail and sustain the universal service: a strategic partnership between Royal Mail Group (RMG) and one or more private sector companies; the transfer of historic pension liabilities from RMG to government; and a new regulatory regime to place postal regulation within the broader context of the communications market (through the transfer of responsibility for regulating the postal services market from Postcomm to Ofcom).

Following the 2010 General Election, an updated Hooper Review (Hooper Update) broadly agreed with the conclusions set out in the 2008 Hooper Report. However, private sector expertise had been introduced to RMG, diminishing the need for a partnership and opening up new opportunities for introducing private sector capital into RMG. The need to relieve Royal Mail of its historic pension deficit was also highlighted as being greater than ever.

Based on these conclusions, the *Postal Services Bill* was published on 13 October 2010 and passed its Second Reading in the Commons on 27 October. The debate is summarised in section 2 of this Paper. The Bill was considered in Public Bill Committee in 20 sittings, between 9 November and 9 December 2010. Following examination of expert witnesses, the Committee debated certain amendments to the Bill and several new clauses, proposed mainly by the Opposition. The principal clauses debated are discussed in section 3 of this Paper. No Opposition amendments were agreed and only minor Government amendments were made to Clause 80 in Part 4 of the Bill. These amendments set a limit to the time during which the Secretary of State has the power to "modify" the universal service and its minimum requirements should a Universal Service Provider (USP) be subject to a "postal administration order".

1 Introduction

The provision of postal services in the UK is currently provided for under the *Postal Services Act 2000*, which, amongst other things, implemented the Articles of the EU's *First Postal Services Directive (97/67/EC)*. The Act includes provision for the designation of one or more national regulatory authorities, in this case: the Postal Services Commission (Postcomm); the licensing of certain postal services; providing a legal basis for the universal postal service; and for the dissolution of the then Post Office Corporation.

The 2008 Report of the Hooper Review,[1] suggested that Royal Mail's ability to respond to changes in the postal services market was being constrained by factors which, if left unresolved, would threaten Royal Mail's ability to provide the UK's universal service.[2] The Report recommended that to save the universal service, the Government needed to introduce a package of measures, which should include:

- a strategic partnership between Royal Mail and a private-sector company;
- the Government taking responsibility for Royal Mail's historic pension liabilities; and
- appointing Ofcom (rather than Postcomm) to regulate the UK postal market.

The Hooper Review emphasised that each element of this package would have to be completed to secure the future of the universal postal service (and the Royal Mail). No single element of the package on its own could achieve the necessary modernisation or tackle the fundamental difficulties facing Royal Mail.

Following the 2010 General Election, Business Secretary Vince Cable announced that Richard Hooper CBE had been asked to update his 2008 Report. The Hooper Update[3] found that Royal Mail faced broadly the same problems as it had in 2008, but that the situation had worsened with regards to: declining mail volumes; Royal Mail's financial situation; and the pension deficit. The Update reiterated the conclusion of the 2008 Review - that without a package of Government measures to alleviate these problems the future of the universal service in the UK was in doubt - but even more so now.[4]

Following the recommendations of the Hooper Update, the Government published the *Postal Services Bill 2010-2011* on 13 October 2010 and the Bill passed Second Reading in the Commons on 27 October 2010. The Bill was considered in Public Bill Committee in 20 sittings, between 9 November and 9 December 2010. The Committee debated certain amendments to the Bill and several new clauses, proposed mainly by the Opposition. No Opposition amendments were agreed and only minor Government amendments were made to Clause 80 in Part 4 of the Bill.

Part 1 of the Bill provides for the restructuring of Royal Mail Group (RMG). In particular, provision is made to lift the restrictions on the sale of shares in RMG and for the introduction of an employee share scheme prior to any sale. The restrictions on ownership of Post Office Ltd (POL) are modified to provide for it to remain within public ownership, except for a possible move to a mutual ownership structure.

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1 Richard Hooper CBE, Dame Deirdre Hutton, Ian R Smith, *'Modernise or decline. Policies to maintain the universal postal service in the United Kingdom'*, Cm 7529, 16 December 2008

2 *ibid*.

3 Richard Hooper CBE, *Saving the Royal Mail's universal postal service in the digital age: An Update of the 2008 Independent Review of the Postal Services Sector*, Cm 7937, September 2010

4 *ibid*., p42

Part 2 of the Bill provides for the transfer of historic pension liabilities to government and for a new scheme (which the Government proposes should be a pay-as-you-go public service scheme) to be set up to meet those liabilities.

Part 3 includes provision for the transfer of postal services regulation from Postcomm to Ofcom, abolishes the current licensing regime for postal operators and defines the minimum requirements of the UK's universal service obligation (USO).

Part 4 of the Bill makes provision for a "special administrative regime" should the universal service be threatened by the universal service provider (USP), currently RMG, being deemed to be at risk of entering insolvency proceedings.

The full text of the Bill together with its explanatory notes can be found on the UK Parliament website.[5] A House of Commons Library Research paper – *Postal Services Bill* (RP 10/67) - provides background to the Bill and a brief synopsis of the clauses contained in the Bill.

2 Second Reading debate

The Bill received its second reading on 27 October 2010. Introducing the Bill, Vince Cable, Secretary of State for Business, Innovation and Skills, reemphasised the conclusions of the two Hooper Reports:[6]

> The rise of e-mail and the internet has led to a dramatic fall in the number of letters that we send. The previous Government were well aware of that problem, and they commissioned an independent review of the future of the universal postal service chaired by Richard Hooper. That review found that letter volumes were in structural decline, that Royal Mail was in great financial difficulty and that the universal postal service was under threat. The report's conclusion was encapsulated in its title, "Modernise or Decline". All parts of this House accepted the conclusion that the current system was broken; that relates to the previous intervention.
>
> The company, the union, businesses and commentators all agreed with the Hooper conclusion that the status quo then was "untenable". What was the status quo then is still the status quo now, and Richard Hooper is clear that Royal Mail is now in a worse position. How has that happened? The previous Government endorsed Richard Hooper's recommendations and acted on them. They brought forward a Bill that the Liberal Democrats and our coalition partners supported. Sadly, it never reached this House, so the future of Royal Mail was not secured. That Bill would have allowed private sector investment in Royal Mail. It would also have enabled the Government to tackle the pension deficit, and reformed the regulatory regime for postal services. Those are all measures with which we agree, and they form the basis of this Bill. We agree with those measures because, as Richard Hooper says, they are essential if the universal postal service is to survive.

and later:

> When I came into government I was left in no doubt as to the real difficulties. I asked Richard Hooper to update his report from December 2008 because I wanted to ensure that the conclusions were still valid-and they are. Let no one in the House be under any illusion regarding Royal Mail's predicament. I recognise that there has been some progress. Opposition Members who represent areas with sorting offices will know that unions and management are now working together better-we acknowledge that-but that the pension deficit has ballooned. It is now more than £8 billion and Royal Mail

5 Parliament webpage: *Postal Services Bill 2010-11*
6 HC Deb 27 Oct 2010 c347-348

> has, proportionately, the largest pension deficit of any major company in the United Kingdom. In addition, it loses almost £1 million a day on its trading activity. It is an inefficient business in a market that is declining faster than anyone predicted. Hooper now forecasts that letter volumes could fall by as much as 40% in the next five years if nothing is done. That is why we are moving further and faster.

2.1 The sale of Royal Mail

On the Government's proposals to enable the sale of up to 90% of Royal Mail, the Secretary of State said:[7]

> Some Members of the House will say that Royal Mail can modernise and survive while remaining in the public sector. They will say that Government can provide the funding that Royal Mail needs, and that the modernisation agreement in place between the union and the company is sufficient to stave off the decline in the market. That is not a view that I share. I did not share it in opposition and I do not share it now, nor is it shared by Richard Hooper or the company.
>
> Let me be clear. The Government are the wrong shareholder for the company. Given the Government's financial constraints, we cannot invest enough quickly enough, we cannot invest flexibly enough, and every investment that we make has to be cleared by the European Commission under state aid rules. Richard Hooper is also clear that Royal Mail cannot modernise properly, and cannot take the decisions that it needs to take, while it has the threat of political interference hanging over it.

The Bill lifts the restrictions that currently exist under Sections 65 to 67of the *Postal Services Act 2000* on the sale of shares in Royal Mail.

2.2 Post Office Ltd

On proposals contained within the Bill for retaining Post Office Ltd in the public sector, while legally separating it from the rest of RMG, the Secretary of State said that:[8]

> the Post Office and Royal Mail are different businesses. They face different challenges, which means that our approach has to be different. The post office network is unique. There are about 11,500 branches across the country, and it operates in places where other retailers do not. It offers services that other retailers do not. Above all, the Post Office plays an essential social and economic role in our communities. For that reason, the Post Office is not for sale. The Bill is absolutely clear on that point.

The Secretary of State also announced that there would be new Government funding for the Post Office Network of £1.34 billion (£180m in 2011/12, £410m in 2012/13, £415m in 2013/14, and £330m in 2014/15)[9] which the Government would aim to use to "reform the current network, to change the underlying economics, and so reverse the years of decline and secure its long-term future". The Secretary of State further announced that there would be "no programme of [post office branch] closures under this Government".[10]

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7 HC Deb 27 Oct 2010 c355-356

8 *ibid,*.

9 BIS, *£1.3 billion funding deal for the Post Office*, 27 October 2010

10 HC Deb 27 Oct 2010 c353

Following the separation of the Royal Mail and Post Office Ltd, the Government would consult on how the post office network could be converted into a mutual structure and how this would work in practical terms:

> [...] the Post Office is ideally suited to a Co-operative Group style of structure, where employees, sub-postmasters and communities get a greater say in how the company is run. The Bill includes a provision that would allow for a possible future mutualisation of the Post Office. Let me be clear that no firm decision has been taken on mutualisation; there would be a full public consultation before we moved to a mutual structure.

2.3 The inter-business agreement (IBA)

On the continuing formal relationship between the two separate companies, the inter-business agreement (IBA) following the legal separation of RMG and POL, Vince Cable said that:[11]

> I would like to reassure the House with respect to the relationship between the Post Office and Royal Mail. The Post Office is currently a subsidiary of Royal Mail, but they are separate companies and they are very different businesses. As part of our plans for both companies, the Bill will allow for the separation of Royal Mail and the Post Office. Separation will give the Post Office management greater freedom to focus on the branch network and providing new services, but I want to make it clear that in this case at least, separation is not a first step towards divorce.
>
> The Post Office and Royal Mail will continue to work closely together. Each company needs the other. Post offices carried out over 3 billion mail transactions for Royal Mail last year. The two companies are closely linked in the public mind, and are bound together by an overwhelming commercial imperative. There is currently a long-term contract in place between the two companies, and there will continue to be a long-term commercial contract in place. The chief executive of Royal Mail has said that it would be "unthinkable" that there will not always be a strong relationship between the Post Office and Royal Mail.

2.4 Pension deficit

The Secretary of State reiterated that Royal Mail's pension deficit threatened the company's existence:[12]

> Royal Mail's pension deficit is huge, growing and volatile. Put simply, it is not sustainable. Even the recent agreement between the pension fund trustees and the company is fragile. It requires that Royal Mail pay off its deficit over 38 years, which is at least twice as long as any other UK company's repayment plan, and the pensions regulator has already said that it has substantial concerns about the agreement

And later:

> The pension deficit, which is the starting point, threatens the very existence of the company. It is draining cash from Royal Mail's modernisation and preventing it from undertaking the reforms it needs to survive. That is why the Government have to take action today. As part of the sale, the Bill will allow the Government to take on responsibility for the pension deficit. We will not only address the deficit, but reduce the size of the Royal Mail pension plan to a more manageable level for the business. The liabilities of Royal Mail are more than 50 times annual profits. By comparison, the

[11] HC Deb 27 Oct 2010 c353
[12] *ibid.,* c358-359

> liabilities of the average FTSE 100 company are closer to one times profits-an enormous difference.
>
> We intend to reduce the plan to about one tenth of its size today. We will do so by creating a new public sector pension scheme that will assume responsibility for paying out the past pension benefits of Royal Mail employees. In effect, all members of the Royal Mail pension plan will have their past service moved to a new Government scheme like that of the NHS or teachers. It is the same solution to Royal Mail's pension problems as the previous Government proposed in their 2009 Bill.

The Secretary of State would provide a note to Parliament explaining the changes to the pension fund: "hon. Members will be concerned about the detail of the proposed pension arrangements, and we will provide a note to Parliament in order to explain the practical effects of those very complex changes".[13]

2.5 Opposition and backbench response

Responding for the Opposition, the Labour Shadow Secretary of State for Business, Innovation and Skills, John Denham said that the Bill would:[14]

> lead to the total sale of the Royal Mail, and a huge sum of public money would be spent to enable a private sale to take place. I believe that that sum has just gone up again by a substantial amount.
>
> The Bill may mean the Royal Mail, this national asset, passing into foreign ownership or to short-term investors interested only in the quickest possible profit. For the first time ever, it has to provide for a special procedure to deal with the insolvency of a private Royal Mail.
>
> [...] Today's Bill provides, for the first time ever, for the breaking up of the Royal Mail, with different organisations providing the universal postal service in different parts of the country. It breaks the umbilical link between the Royal Mail and the network of local post offices prized by residents and communities up and down the country, and does so in a way that threatens the future of thousands of local post offices. It is a very serious Bill, and it must be considered seriously and in detail in the weeks and months ahead.
>
> Of course, serious discussion of the Bill must acknowledge why the coalition Government have concluded, as the previous Labour Government did, that doing absolutely nothing is not an option.

John Denham set out the basis on which his Party would oppose provision for the sale of Royal Mail to the private sector (essentially Clause 1):[15]

> We will oppose the Bill, although we do not oppose every element in it. We believe that abandoning the commitment to keep Royal Mail as a publicly owned organisation is wrong. Clause 1 abandons that commitment, which was restated by the Labour Government. That will inevitably threaten the public interest, from the moment the sales process starts to the long-term future of both Royal Mail and the Post Office.
>
> Public ownership of the Royal Mail provides the ultimate safeguard for the public interest. It ensures that even if other policy fails, it is not too late to defend the interests of the public, whether by protecting the delivery of letters six days a week to every

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13 *ibid.*,

14 HC Deb 27 Oct 2010 c363

15 *ibid.*, c364

> home in the UK at a standard price, or by guaranteeing the business that can sustain a network of local post offices. Public ownership can ensure that public money is invested for public benefit, not private profit.
>
> [...] The Secretary of State made no case for why he had decided to go beyond the limited equity stake that was proposed, not without controversy, by the last Labour Government. I wait with interest to hear the remarks of my right hon. Friend the Member for Wolverhampton South East (Mr McFadden), if he catches your eye, Mr Deputy Speaker. The Secretary of State made no case for the full privatisation of Royal Mail.

The Opposition was also concerned about the continuation of the inter-business agreement (between the Royal Mail and Post Office Ltd) and its impact on the Post Office Network should Royal Mail become privately owned: [16]

> We oppose the Bill in part because of its central aim, which is the sale of Royal Mail and the breaking of the key contractual link between Royal Mail and the post offices. There are around 11,500 post offices. The Royal Mail Group is required by licence to support 4,000 post offices. The managing director of Post Office Ltd told a parliamentary Committee that a commercially viable network would have only 4,000 offices.
>
> The previous Labour Government made provision to keep a further 7,500 branches open. They are supported by an annual public subsidy of £150 million, which is due to rise to £180 million next year, and by business that is guaranteed to Royal Mail through the inter-business agreement. The Royal Mail business that is guaranteed by the IBA is crucial to the current viability of the post office network. Leaving aside the public subsidy, Royal Mail business generates 37% of the income of local post offices. However, the IBA could end immediately under this Bill when Royal Mail is sold. A privatised Royal Mail could simply take the work elsewhere. As Consumer Focus-the organisation that the Secretary of State wishes to silence-says in its briefings,
>
> *"following privatisation of Royal Mail, subsequent contracts would require a competitive tender process with no guarantee that Post Office Ltd would retain this contract".*
>
> The Bill provides no mechanism to ensure that the continued long-term use of the post office network is an integral part of Royal Mail. That would be a disaster for non-profitable post offices in rural and urban areas alike. The Bill could have defined post offices as access points for the universal postal service. Consumer Focus says that the Bill could have specified the number of post office branches to remain. However, the Bill does none of those things. That is a fatal flaw. The axe of uncertainty hangs over thousands of post offices, which puts a huge question mark over the interesting and attractive concept of a post office mutual, because mutuals can go out of business too if their income is taken away. Hooper concluded that the Post Office should remain publically owned, saying:
>
> *"Given the social obligations of the Post Office, there is little prospect that the network will be sustained on a fully commercial basis."*
>
> However, a mutual is a commercial organisation, subject to commercial logic, and without guarantees of income, it will fail.

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16 HC Deb 27 Oct 2010 c368-9

Lorely Burt, Chair of the Liberal Democrat Policy Committee on Business, Innovation and Skills, welcomed the Bill but was concerned about consumer protection, especially in rural areas:[17]

> I welcome the Bill, which largely represents the policy that the Liberal Democrats went into the general election with. There are differences. Under our policy, the Government would have retained a stake, but we understand the problem of making this a very attractive sale, so that part of it has gone. Under our policy, share ownership for employees would have been larger, but the measure still represents the largest share ownership ever on record, so we can live with that. Another difference is the potential to mutualise the Post Office. That is right up our street as Liberal Democrats; it is Liberal Democrat-plus, so we welcome that.
>
> We have strongly maintained that the Post Office should never be sold and we hope that, under the new proposals, it will become stronger, thrive and even grow. The £1.34 billion announced today is extremely welcome.
>
> [...] 90% of Royal Mail will become a private company. That necessitates close scrutiny to ensure that Royal Mail employees and customers and the taxpayer are protected.
>
> Consumer Focus wants changes that protect consumers to be added to the Bill. It believes that Ofcom "must" impose a consumer protection condition on every postal operator-rather than "may", which is the term currently used in the Bill. Please can we have "must" instead of "may"? Can we also add the requirement that Ofcom must impose the essential condition that every postal operator must guarantee the confidentiality, safety and security of mail?
>
> I know that Opposition Members are concerned that the Bill's provisions may be detrimental to customers in rural areas. Can we therefore insert into the Bill a definition of the minimum number of access points to the mail system-post offices and post boxes-and the criteria for geographic distribution, together with criteria under which exceptions could be sought? Can we also add a requirement on Ofcom to consult representatives of residential and small and medium-sized enterprise customers, and other particularly vulnerable customers, when conducting any review of the universal postal services order? SMEs often get left off the list, but it is important that they are consulted as well.
>
> Customers need proper protections when things go wrong. Can we build into the Bill a requirement for postal operators to be members of an approved redress scheme to ensure complaints-handling standards can be monitored and independently investigated? Finally on the consumer front, can we build in a requirement that postal operators must continue to provide appropriate information to the regulator and an appropriate consumer watchdog in order to enable independent monitoring of performance, quality of service, complaint handling and services provided to vulnerable consumers?

The Bill passed Second Reading by 321 votes to 238. A programme motion was agreed without a vote.[18]

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[17] HC Deb 27 Oct 2010 c375-7

[18] *ibid.*, c378

3 Committee Stage 9 November to 9 December 2010

The Public Bill Committee considered the Bill in 20 sittings between 9 November and 9 December 2010. Twenty-one written submissions (Associated Memoranda) from outside bodies and individuals were received.[19]

3.1 Oral evidence sessions

Oral evidence was heard from witnesses, representing a variety of interests, over four sittings:[20]

Date	*Witness*
Tuesday 9 November	Royal Mail Group
	Post Office Ltd
	Communication Workers Union
	Unite
	National Federation of SubPostmasters
Tuesday 9 November	Office of Communications (Ofcom)
	Postal Services Commission (Postcomm)
Tuesday 9 November	Mail Users' Association
	Mail Competition Forum
	Mutuo
	Employee Ownership Association
	ifs ProShare
Thursday 11 November	Consumer Focus
	Association of British Credit Unions Limited
Thursday 11 November	Royal Mail Pension Plan Trustees
Thursday 11 November	Richard Hooper CBE
Thursday 11 November	Department for Business, Innovation and Skills

The sessions focused on four areas of the Bill: the need for private sector capital to help Royal Mail continue to modernise; Post Office Ltd remaining in the public sector and how this would impact on the inter-business agreement between the Royal Mail and Post Office Ltd; the continuing pension deficit; and the 'fairness' of the proposed regulatory framework (including the passing of regulatory power from Postcomm to Ofcom).

Modernisation

When asked whether the Royal Mail thought the Bill overall would 'solve' the issues facing Royal Mail, the Chief Executive of Royal Mail Group, Moya Greene, welcomed the Bill saying that it would:[21]

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19 The Associated Memoranda are available on the *Postal Services Bill 2010-11* Parliament webpage.

20 The text of these evidence sessions is available on the *Postal Services Bill 2010-11* Parliament webpage.

21 PBC Deb, 9 November 2010, Q1

> substantially help matters, in relation to Royal Mail and the stable provision of the universal service. Royal Mail has faced three important challenges. The first is the ability to go forward with the modernisation programme, which is already under way. That requires capital, which is the first thing that the Bill will do for Royal Mail—it will give us access to capital.
>
> Secondly, Royal Mail has suffered for many years under the crushing strain of the pension liability, which is completely disproportionate to the size of the company. The Bill will lift the historical liability.
>
> The third way in which the Bill will be instrumental, as far as the universal service and its stability is concerned, relates to the regulatory framework. The regulatory framework has been very important for creating competition, and I think that everybody knows that a universal service provider must accept a regulatory framework. However, the one that we have had in Great Britain has been a significantly greater burden than those that exist for other universal service providers in Europe. There is a need now, given the dramatic change in the market, for that regulatory burden to be relaxed and to be more in line with what has happened in the market. I think that the Bill is a very positive development for Royal Mail in those three ways.

The CEO also praised Royal Mail for the progress which had already been made towards modernisation: "I can tell you that the modernisation programme that is under way here—I thought that I had led a really terrific modernisation programme at Canada Post until I got to Royal Mail—is truly excellent".[22]

The sale of Royal Mail

When the Committee asked if the sale of a stake in Royal Mail was the only solution to Royal Mail's current problems, the Chief Executive of Royal Mail Group, said that, in her opinion:[23]

> there are real problems with having Governments as providers of capital to big companies such as this one. The proof is in the pudding. A very large study was done of postal operations around the world. The ones that were owned by Governments had the least access to capital, the least timely access to capital, and when the market is changing as fast as it is in our world, we need almost continuous access to get the modernisation accelerated. So, I do not think that Governments are, generally speaking, the best shareholders for commercial enterprises, and certainly commercial enterprises that have to undergo a lot of change to meet the market.

When asked whether Royal Mail was a viable business which would attract sufficient private sector investment, the Chief Executive of Royal Mail Group thought that:[24]

> the company has huge value, and I have been so impressed. I have been to Cardiff and Glasgow, and I have been on the night shift at Mount Pleasant. I have seen the absolute best mail processing centres in the world, and I have also seen the worst, in which mountains and mountains of mail are still handled manually—the people have their heart and soul in the business, but the mail is still handled manually. We still have a long way to go, but if you see the heart and the amount of change that this company has absorbed in two short years, you have to say to yourself that, absolutely, this company has huge value.
>
> Will the company sell? I certainly hope so. We need the capital, and I think that we have a great story to tell. I think that the people who will be interested in this business

[22] *ibid.*, Q4
[23] *ibid.*
[24] *ibid.*, Q25

> will look at the modernisation plan that has been driven by one of the best transformation executives in the United Kingdom—my partner, Mark Higson, has been driving the change in our company—and they will say, "That is a story unlike any other in all the transformations that all such businesses have had to undergo."
>
> Should we wait? I think we should sell the company and get it the capital that it needs as soon as we can. I hope that that will be some time in 2012, when we will be through this legislative process and the other factors that are important to a sale, such as a signal on how much regulatory relaxation will be available for the company and for investors to turn their minds to. Yes, I think that it will sell, mostly because it is a great company with a great mission.

Dave Ward, Deputy General Secretary of the Communication Workers' Union (CWU) suggested that there was no need for private sector capital and that further modernisation could be funded through the public sector if Treasury rules were changed: [25]

> You could then change the Treasury rules, which is something that the Government are considering around NHS foundation trusts. Why can that not be considered for Royal Mail? Our view is that Royal Mail could still borrow on the open market, and we understand Donald's point that you need to get that money more quickly. We simply say that the Government haven't looked at the alternatives. Modernisation is the real exam test, not privatisation. We are genuinely concerned, and I believe that the work force are concerned about the debate that is taking place now in relation to whether what the Government are doing is truly going to support the agreement that we have reached.

Brian Scott, Assistant National Secretary, Unite also believed that privatisation was not the answer:[26]

> We believe that privatisation is not the answer; modernisation is taking place, but there is still a long way to go. The World Class Mail programme was mentioned in a previous panel contribution, and it is a very good thing in Royal Mail. It makes people feel committed and feel part of the solution, not part of the problem. It makes them involved in what they are doing in the workplace, but I have two criticisms of World Class Mail. One is that it involves relatively small numbers—it may be in 10 places, but it is a start—but it also takes the organisation back to where it should have started from in the ways of working, the way that the kit was prepared before it started and the way it was maintained. It is not something groundbreaking or new in that regard. It takes it back to what it should have been all the time. There is a long way to go on that. We think that the approach in the Bill—privatisation—is blinkered; there are other options. The same result can be achieved through other means.

Employee share ownership

When asked their views on the employee share scheme, as set out in the Bill, most witnesses were positive about the scheme. Moya Greene said that:[27]

> On employee share ownership, the signs in the Bill are very positive. In every company that I have ever been associated with, employees having a stake in the success of the company has been a positive development. It helps align our people with their own futures and the things that you have to do as a company to keep that future secure and keep the company in a good place, as far as the competition is concerned. In my personal experience, employee share ownership has been very positive.

[25] PBC Deb, 9 November 2010, Q64
[26] *ibid.*, Q80
[27] *ibid.*, Q30

Richard Hooper CBE agreed that a share scheme would aid employee engagement but only if it was "correctly structured":[28]

> [...] employee shares help employee engagement. I think they encourage it. I also think that the idea of the trust is very important. This is, again, more of a political decision, but there is a problem with employees just having shares. I know about this because I was at BT in 1984 during privatisation. What happens is that employees punt on shares, and the moment they need a holiday, they sell the share, so some of the incentivisation is lost. The beauty of the John Lewis Trust style is that you do not physically own the share. You cannot sell it; you do not make capital gains at the end of your time. Basically, you are being involved in a profit-share, dividend-share arrangement, which means that when you leave John Lewis—or when you leave Royal Mail if there is this trust—those shares still stay in the body, and I think they are more engaging, but that is a personal view.

However, when asked, the CWU were a little more sceptical about the value of such a scheme to its members:[29]

> What is this about? What are we trying to actually achieve by the 10% employee share offer? If we accept that what we are trying to achieve is to motivate and engage employees to make sure that they feel more involved in the decisions of the company, we want that. We agree with that. That is why we have reached the agreement that we just have. But I have to say that I fundamentally disagree with Donald's statement that employees are going to be cheering from the rafters when they get their first dividend. There are so many more important issues that you have to deal with if you want to achieve employee engagement and motivation. The way to do that is to apply the terms of the agreement that we have reached.
>
> [...] Now, where are the employees on this? Well, why not ask them? We are not afraid for the Government to ask. We'll be asking them about where they are. I'll tell you what the employees will tell you honestly. They know that there are no free gifts. They know that, in giving them 10% of shares, there is every possibility that that comes out of the same pot of money that protects their pensions and increases their basic pay. Ed [Davey], I wish you'd asked us before you made up this policy. I don't think you understand the agreement that we've reached. I'm going to keep coming back to that point, because that is the biggest chance of changing the culture in the company. If you want to incentivise people, you take the incentive down to local level; you don't have it up here. If you want evidence of that, have a look at colleague share. That was something like £1.2 billion, which the Government earmarked for Allan Leighton to offer to employees. It didn't change a single thing, that is the evidence and that is the truth. If it had done that, we wouldn't have had the disputes we've had; we wouldn't have had the agreement that we've just reached. I am sorry, I believe that if you share money with an army of private investors—because that is what the dividend is about—then you are taking money away from the employees who really care about the company.

Post Office Ltd and mutualisation

George Thomson of the National Federation of SubPostmasters was very supportive of the concept of mutualisation for the Post Office Network:[30]

> The National Federation of SubPostmasters has been working on the mutualisation concept for more than two years. In fact, we are very supportive of the Post Office eventually becoming a mutual company. However, the company has to be worth

[28] PBC Deb, 11 November 2010, Q230

[29] PBC Deb, 9 November 2010, Q76

[30] *ibid.*, Q70

> mutualising. As it is at the moment, Post Office Ltd is, financially, a basket case and many thousands of sub-postmasters are, as we speak, hanging on by their fingertips. So there is a lot of work to be done before the funding package really kicks in in April 2012, because we have 18 months of sub-postmasters being up against very strong headwinds to survive and keep their office alive in the community.
>
> Certainly, as a concept, mutualisation would work. In fact, I would go further: if Royal Mail Group is privatised, I think there is a case for the postmen and the staff to own 20% of Royal Mail Group; for that to be mutualised as a concept so you do not sell your shares when you leave the company but leave them behind; and for the CWU to be on the board of the new Royal Mail Group. So I see it not just for Post Office Ltd. I see it as let's do it right within Royal Mail Group. If it is going to be privatised to bring in private capital, there is a case for making it 20% of the shares, which are not sold on. You make sure that the company is headquartered in Britain and it is an IPO—initial public offering—so it is the British public who buy the shares, initially at least.

When asked further what form of mutualisation he thought would be best for the Post Office, George Thomson said that:[31]

> We are very attracted to the John Lewis model—agents and staff owning the company, going forward with an asset lock so that assets cannot be sold on and working to make the company very profitable and very worthwhile.

Inter-business agreement (IBA)

George Thomson of the National Federation of SubPostmasters believed that the separation of the Post Office from the rest of RMG could only be successful if the current inter-business agreement (IBA) between the two companies was extended:[32]

> On separating Post Office Ltd from Royal Mail, it is unprecedented and we have to get it right, which is why we need a 10-year inter-business agreement. A five-year IBA was signed a year and a half ago with Alan Cook. We were happy with five years because it was going to be a partial privatisation; the Government would still own Royal Mail and there would be a company called Royal Mail Holdings, so we had security. We need security for sub-postmasters; they have £2 billion of their own money invested in this business. If you were a company investing £2 billion in a PFI to build a school or hospital, you would get a 21-year contract. I am not asking for a 21-year contract, but, by God, I am asking for a 10-year IBA contract.

Moya Greene, Chief Executive of Royal Mail Group, suggested that the relationship between the Royal Mail and Post Office Ltd would continue to be important to Royal Mail should the Bill pass: [33]

> In terms of what is in the Bill, what is important for Post Office is that we maintain our strong relationship with the Royal Mail Group. Royal Mail Group is over a third of our revenues but the rest of our revenues come from Government and we will be looking to Government to grow the revenues in terms of front-of-office services through Government and also through financial services. Some 80% of customers now can access other bank accounts through the Post Office, so there are tremendous opportunities for us in the privatisation of Royal Mail and the separation of the Post Office. It enables us to capitalise on the services that Post Office is offering to communities.

[31] PBC Deb, 9 November 2010, Q72
[32] *ibid.*, Q70
[33] *ibid.*, Q80

Paula Vennells, Managing Director of Post Office Ltd, agreed that the relationship was important to both sides and said that from the Post Office's point of view:[34]

> we have a very strong commercial relationship with Royal Mail and that is something that both businesses would want to continue, so as we transform the post office network we will make it into something that Royal Mail will want to use. It will not want to go anywhere else because first of all we have the massive rural reach which it would be very difficult for it to get somewhere else. It will get all this through one distributor. We will be able to extend our opening hours. Royal Mail will be interested in this if we can provide the right service for its customers, such as things like Post Office Local, which can open at 6 o'clock in the morning and close at 10 or 11 at night. The post office services will be open for all that time, serviced in a way that is economically viable for the operator. Those are the sorts of service-level agreements that we would be discussing with Royal Mail. I do not see other retailers as a particularly serious threat, because Post Office has an enormous amount of expertise in this area, and with the reach and the way we will change the network I am very confident that we will have a very long and strong commercial agreement with Royal Mail, but I would ask my colleagues to comment on that.

Moya Greene concurred and added that she thought it would be:

> [...] unthinkable that we would not have a very long-term relationship with the Post Office. Here is a group of people—the best and strongest network in the country, by any yardstick, with 11,900 outlets—who are committed to and want to sell our products. This was something that came up in a conversation very early on when I first met Mr Davey. To me it is unthinkable that we would ever have anything but the very strong relationship that we have now with the Post Office. I admire our other partners like WH Smith; of course I do. But that is not the Post Office. The Post Office is everywhere with a great brand. It is a group of people who are committed to postal products, who know postal products, who offer a fantastic service in their communities, a larger range of service in their communities than any other retail operator

Richard Hooper CBE believed that the "importance of the inter-business agreement should not be underestimated" as it:[35]

> [...] generates, as you know, one third of Post Office's revenue, which is around £350 million a year. The inter-business agreement has to be well thought through, well negotiated and have a sensible time scale. George Thomson talks about a 10-year time scale and others talk about a five-year time scale. There are commercial issues there. It is extremely important because Post Office Ltd clearly has to have certainty for its future and, indeed, Royal Mail for its future. Moya is one of the strongest advocates of reminding us all that the front office for Royal Mail is extremely important. It is extremely important both for putting mail into the system and for retrieving parcels and packets, which is part of this story. There is no doubt that the chief executive of Royal Mail sees that as an extremely important relationship and the inter-business agreement is the key document.

However, Minister for Employment Relations, Consumer and Postal Affairs, Ed Davey made the point that the IBA was a commercial contract between two legally separated companies (though still part of the same Group) that would remain a commercial matter for the two companies following their separation:[36]

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[34] *ibid.*, Q42

[35] PBC Deb, 11 November 2010, Q228

[36] *ibid.*, Q244

> The inter-business agreement is what it says on the tin—it is an agreement; it is a contractual relationship. It is currently between Royal Mail and Post Office Ltd, albeit that they are in the same group, but it is a commercial agreement between those two companies now. No previous Government have thought to put it on any different footing. I am pretty clear that there will an agreement in the future, but it is for the two companies, which will be separate and not in the same group, to reach that agreement. I refer the Committee to what the chief executive of Royal Mail, Moya Greene, and Donald Brydon, the chairman, said. Moya Greene said it was unthinkable that there would not be a long-term relationship between Royal Mail and Post Office Ltd. Donald Brydon said that he wanted to have the longest possible legally permissible agreement, and that is what he intends to do.

Shadow Minister for Business, Innovation and Skills, Gordon Banks, argued that if the link between the two companies would "not be broken" it should be possible to include provision for a long-term IBA in the Bill:[37]

> [...] if it is unthinkable, as Moya Greene has said, that the link will not be broken between Royal Mail and Post Office Ltd, why not put it in the Bill? You have talked about non-viable post offices. Surely, a long-term IBA is a potential solution for those post offices that are not viable. A long-term business arrangement would be very important to the many small and medium-sized enterprises that run post offices and need to invest in their businesses, at the same time as having a contract of this nature. A long-term IBA would, therefore, be a further encouragement for these businesses to invest in their businesses and improve the quality of the service that they provide. Would you agree with that?
>
> Are you able to confirm that the private Royal Mail would be able to insist on renegotiating any IBA that might exist with Post Office Ltd? Although it is not quite the same situation as with Serco and its suppliers, in such a position you have a major player and somebody who is dependent on the major player. Royal Mail will have all the cards in its hand at that point, so it is very important to understand whether Royal Mail will be able to insist on the renegotiation of the IBA.

The Minister responded that he believed such a clause would not be legal:[38]

> If you actually wrote that there should be a contract between two companies that are going to be separate companies into law, I think that it would be subject to serious legal challenge. I am not aware of any precedent, and I think it would be a bizarre thing to do. Previous Governments have not thought it necessary, which is why we do not think it is necessary. It would be open to challenge.
>
> When we are talking about sub-postmasters having reason to invest in a business, you are absolutely right; we have to give them confidence and certainty going forward. They have not had that for a long time. When you talk to sub-postmasters, they have gone through a searing experience in recent years, and they want to be reassured that things are going to get better. However, I do not think that you do that by putting into law an agreement that is subject to legal challenge and does not actually deal with the underlying economics.

[37] PBC Deb, 11 November 2010, Q245
[38] *ibid.*

Royal Mail Pension Plan (RMPP)

The Committee asked witnesses for their overall response to the provisions in Part 2 of the Bill. Moya Greene, Chief Executive of Royal Mail Group, described them as "very positive":[39]

> This is a very significant move, and the Government have made a very important initiative. The provisions in the Bill for the transfer of the pension are clear: they give security to our people; they help us in terms of improving what has been a crushing load to the balance sheet of the Royal Mail; and in the round, they are very positive.

Dave Ward, Deputy General Secretary of the Communication Workers' Union (CWU), welcomed the fact that Royal Mail would not have the "financial burden of the pension deficit going forward" but remained to be convinced regarding protection for pension benefits in future: [40]

> We are not convinced that this is as good a deal for people, in terms of members' pension entitlements, as the way that it is being presented. What you have to think about is what assets of the scheme are going to be left. Are they going to be sufficient to fund the scheme going forward?

George Thomson, National Federation of Subpostmasters, described the provisions as "common sense and...long overdue – good news".[41]

David Sibbick of the Mail Competition Forum, representing other providers, did not feel the "whole of the deficit should necessarily be picked up by the taxpayer":[42]

> It represents, I think I heard this morning, something like £300 million a year to Royal Mail. That £300 million gives it, if you like, a competitive advantage that private sector companies, which are having to cope with pension fund deficits themselves, do not enjoy.

Jane Newell, Chairman of Trustees of Royal Mail Pension Plan (RMPP) explained that while several factors contributed to the deficit - "longevity, falling bond yields and, at the time of our last formal valuation, specific investment market conditions" - the trustees' investment performance record was not one of them:[43]

> The trustees have a very strong investment performance record—very strong. The Secretary of State mentioned that in passing in Parliament, in the heat of discussion, as one of the reasons. I think probably what he meant to say was that one of the reasons could be bad investment decisions—but in this case, it most certainly was not. I wrote to the Secretary of State the next day and pointed out that unfortunately that was an incorrect statement. He very kindly and very courteously replied to me, to say that that would be corrected as the Bill went through Parliament.

39 PBC Deb, 9 November 2010, Q8
40 *ibid.,* Q78
41 *ibid.,* Q80
42 PBC Deb, 9 November 2010, Q130
43 PBC Deb, 11 November 2010, Q205-6; See also, HC Deb, 27 October 2010, c360 [Vince Cable]; See also PBC Deb, 9 November 2010, Q9 [Moya Greene] and Q78 [Dave Ward]

If the Bill was not implemented and there was no solution for the RMPP, it would be in a "very, very difficult situation".[44] The trustees were focused on safeguarding members' benefits and wanted to see the strongest possible public undertakings given:[45]

> We want to see the strongest possible undertakings in the Bill. If things are not in the Bill because it has already got to a certain point when that is what it is, then we want to see the strongest possible undertakings in Parliament in *Hansard*, written there in black and white—"We will safeguard these. We guarantee that these benefits will not be reduced." Those are the sorts of statements that we want to see. Some of them have already been made, and that is very helpful.

They were "satisfied in principle" that the RMPP would be able to meet the liabilities it remained responsible for: [46]

> The idea is to leave the plan fully funded. When we know the cut-off date we will then be able to see what liabilities are remaining, so that the plan can be left fully funded. At that point, we would have discussions on which part of the assets should remain with us and which part should move to Government. [...] We do not know its size exactly, but we are probably talking about 10% of the size. That would be much more easily supportable by the plan sponsor because it is much more in proportion to the size of the business.

Richard Hooper CBE reiterated his view that government should only take responsibility for the pension deficit as part of a package:[47]

> The reports in 2009 and in September 2010 were quite clear that the three big hitting recommendations – parts 1 and 2 of the Bill – were locked together. [...] In my view, the unions' feeling was that you could do two or three and not one. My main argument against this is as follows: I think it is unreasonable for the taxpayer to take on the pension deficit [...] without a cast iron guarantee that the modernisation of Royal Mail will continue to accelerate.

Minister for Employment Relations, Consumer and Postal Affairs, Ed Davey, set out the Government's thinking on the extent of the liabilities it would take on:[48]

> Since Second Reading, we have been considering when the dividing line, or the cut-off, should be between the liabilities that the Government will take on and what will remain with the ongoing Royal Mail pension plan, which will be with the company. We have reflected on that and come to the conclusion that the cut-off date will be as close as is practical to the date of the sale of the shares in the business. We will, no doubt, tease this out a bit more when we debate those clauses, but based on an illustrative cut-off date of 31 March 2012, which I think is a sensible one, our estimates are that that would leave liabilities of about £1.5 billion with the plan. That relates almost solely to the salary-link liability.

He was "pretty confident" that the Government would get state aid clearance from the European Commission for its plans:

> We are fairly sure that it will agree to a solution for the pension deficit that has the shape and feel of what is included in the Bill.

44 *ibid.*, Q206
45 *ibid.*, Q210
46 *ibid.*, Q208-9
47 PBC Deb, 11 November 2010, Q216
48 *ibid.*, Q271

However, a "certain degree of flexibility" had been retained in case changes needed to be made.[49]

Changes to the regulatory regime

When asked whether Royal Mail had a greater burden of regulation, compared to other countries Universal Service Providers, and whether the Royal Mail would seek to change its Universal Service Obligation should the Bill pass, Moya Greene, Chief Executive of Royal Mail Group responded that the Royal Mail would be looking for a "level playing field":[50]

> We are not seeking changes to the universal service at all. The universal service is protected in this Bill, and that is very important. At six days a week, the universal service in Great Britain is a strong service, and it also covers the full array of products. We are not seeking any change to the universal service. What we have pointed out and, I think, has been recognised by the Government is that the regulatory approach on the economic side has been a different and, I would say, more restrictive approach than has been applied in most other countries.
>
> First, in many countries, for example, only universal service products are regulated. That is not true in the UK where almost everything is regulated. Of the revenues of the Royal Mail, 86% is regulated. The breadth of the regulatory regime is certainly more extensive.
>
> Secondly, the areas in which price control obtain are greater. What we have been saying is that we need to compete on a level playing field. There is a huge number of pressure points in the market to keep prices within reasonable bounds. Those are the competitive pressures that exist in the UK market. The amount to which prices are controlled is a difference.
>
> Thirdly, and perhaps most importantly, we have a regime that mandates that our competitors have access to our network at any point and that they have access with a margin that is protected for them, which is the headroom price control.
>
> In those three areas, you will find that the regulatory approach that has been applied in Great Britain has been great at generating new competitive pressures, which I fairly and fully expect should be there. We should be subject to competitive pressures, but we are at a stage where the competition in the market is very robust. Now, as the only participant that is regulated in this way, we need a fair and level playing field on which to compete.

Dave Ward, Deputy General Secretary of the Communication Workers' Union (CWU) agreed that the current access arrangements for Royal Mail's competitors were not fair:[51]

> [...] if you change the access regime, or the regulatory regime—I think most people would accept that that is not a fair regime to Royal Mail. I think Postcomm got it wrong in the way that it did the balancing act between providing the universal service obligation—with a level playing field—and introducing new competition. The truth of the matter is that Royal Mail is subsidising its competitors, which can use downstream access while Royal Mail has to pick up the final mile. There is no way that that is going to be cost-effective if you are providing a universal service. If you change that and fix those problems, that throws up further money.

[49] *ibid.*, Q272; For an explanation of these rules, see BIS leaflet, *State aid: a beginner's guide*
[50] PBC Deb, 9 November 2010, Q10
[51] *ibid.*, Q64

When asked if he had any concerns about the proposed regulatory framework set out in Part 3 of the Bill, Richard Hooper CBE believed this part of the Bill was “extremely important” for improving postal services regulation:[52]

> I do not think that we in this room should try to regulate Royal Mail in a close sense; that is much better left to an independent regulator. You may say that I am biased because I was the founding deputy chairman of Ofcom. I am an acknowledged fan of Ofcom and how it has approached things, so I think it will do an extremely good job.
>
> Clause 37 was discussed on Tuesday and it says that Ofcom “may” impose access regulation. That is a very interesting use of the word “may”. Moya Greene has a strong view about ex ante access regulation, and I think it is important that Ofcom has that flexibility. Indeed, clause 6 of the Communications Act 2003 gives Ofcom deregulatory powers, so it gives it the ability to deregulate.
>
> The heart of what I was saying in the report is: decide where the general monopoly, for want of a better word, is. Economists do not usually let me use words such as “monopoly”, but I like to use it. Decide where it is. Effectively, it is in the delivery bit of Royal Mail—99% of letters are delivered by Royal Mail, and upstream is much more competitive. Decide where the monopoly is and in that monopoly you have the universal postal service strongly welded. Make sure that that is very clearly and well regulated, then reduce regulation outside the monopoly where competition is beginning to bite. That is the philosophy in the report and I think that that philosophy is in part 3 of the Bill, too.
>
> When you look at part 3 line by line, you might make sure that Ofcom and Postcomm are content that there are sufficient powers to prevent cherry-picking. Cherry-picking is a big issue and one that we have discussed at length. It basically means that somebody comes in and starts delivering two days a week to Liverpool, Birmingham, Manchester, Edinburgh, Glasgow and Cardiff, and then expects the rest of his or her mail to be delivered by Royal Mail to all the nasty places that cost lots more money.
>
> So there is a basic cross-subsidisation issue, because my first-class mail from north London to Kensington is subsidising that to the Orkneys. Do make sure that Ofcom and Postcomm, which is giving over the role, are content that they have the powers to stop cherry-picking, because it would be very damaging to the universal postal service.

When asked how the Bill would ensure the Royal Mail would be given sufficient protection against unfair competition from those competitors that had access to Royal Mail’s delivery network, the Minister for Postal Affairs, Ed Davey said:[53]

> We have introduced a number of provisions to the Bill that differ from the 2009 proposals, which I hope will ensure that the universal service provider is not unfairly affected. There is an overriding duty on Ofcom to secure the universal service, which was in the 2009 Bill. We have added the duty to ensure the financial sustainability of the universal service provider. We have toughened up the duties on Ofcom to look after the universal service provider. That is a very important change. When we debate part 3 of the Bill, I hope colleagues will realise that we have responded to the concerns of Members of all parties that Royal Mail has been unfairly treated in the past.
>
> We have also changed the access provisions; I forget which clause that is in, although I can find out shortly. Ofcom will be able to mandate access to Royal Mail’s network—primarily its sorting centres or inward mail centres—only if it meets several conditions

52 PBC Deb, 11 November 2010, Q226
53 *ibid.*, Q261

> simultaneously. Effectively, we have put "and" where it said "or" in the previous Bill. That toughens up the regime, which is welcome.
>
> We can expand more when we debate that clause in detail, but in brief, if we had not done that, I fear that competitors might have requested access to Royal Mail's network at almost any point they wanted—I am not saying that they would have done that, but that they might have had the power to do so. That might have been quite disruptive for Royal Mail's management and very costly. I believe that it would have imposed unfair costs on Royal Mail.

3.2 Debate on clauses

Following examination of the witnesses, the Committee debated certain amendments to the Bill and several new clauses, proposed mainly by the Opposition. None of the Opposition amendments were agreed and only minor Government amendments were made to Clause 80 in Part 4 of the Bill. The principal clauses debated are set out below.

The House of Commons Library Research Paper – *Postal Services Bill* (RP 10/67) - provides further background to the main areas of debate from this part of the Public Bill Committee Stage. It also draws on the explanatory notes accompanying the Bill.[54]

The Restructuring of Royal Mail Group

Part 1 of the Bill (Clauses 1 to 14) deals with the restructuring of the Royal Mail Group of companies. In particular, provision is made to lift the restrictions on the sale of shares in Royal Mail. Provision is also made for an employee share scheme prior to any sale. The restrictions on ownership of Post Office Ltd (POL) are modified to provide for it to remain in Government ownership, except for a possible move to a mutual ownership structure in future.

Debate in Committee on amendments to Part 1 of the Bill surrounded Opposition proposals to amend Clause 1 to include a "sunset clause" limiting the time the Government had to sell Royal Mail Group without returning to Parliament and new clauses to retain Royal Mail in the public sector.

Removal of existing statutory restrictions on ownership

Clause 1 of the Bill removes the current restrictions on the ownership of Royal Mail Holdings plc and its subsidiaries by repealing Sections 65 to 67 of the *Postal Services Act 2000*. These sections contain restrictions on the issue and transfer of shares or share rights in Royal Mail Holdings plc and its relevant subsidiaries (including RMG and POL).

In essence, by repealing Sections 65 to 67 of the 2000 Act, Clause 1 of the current Bill enables the Secretary of State to dispose of part or all of Royal Mail Holdings plc as he sees fit (subject to certain restrictions on the ownership of Post Office companies - see Clause 4 of the Bill) without the further approval of Parliament.

Introducing Opposition amendments to add a sunset clause to Clause 1, Shadow Minister for Business, Innovation and Skills, Gordon Banks, suggested that sunset clauses were well recognised and that:[55]

> if the Government's proposals to privatise Royal Mail completely are approved by the Committee, the House and the other place, the amendments would put a time limit on the Government's ability to sell off Royal Mail. If either of the amendments is accepted, the relevant date would add certainty to the business and, indeed, the work force—

[54] *Postal Services Bill 2010-11* – Explanatory Notes Bill 78-EN

[55] PBC Deb, 16 November 2010, c142

> certainty that is lacking in the Bill, as currently drafted. As it stands, the Bill empowers not only this Government, but future Governments, with the ability to sell off Royal Mail.

Gordon Banks also suggested that without the amendment to Clause 1, the "unrestricted time limit could also act as a mechanism to drive down the price for the business"[56] from any sale of Royal Mail Group. Mike Weir was worried that the amendment to Clause 1 would actually have similar consequences if it was agreed: "there a danger of the opposite effect of what he proposes with a sunset clause? The Government might go for a fire sale of Royal Mail to get underneath the time limit, and that is my concern with his amendments"[57]. Minister for Employment Relations, Consumer and Postal Affairs, Ed Davey, suggested that the inclusion of the amendment was a bad idea:[58]

> It is a bad idea for this reason—we have made it clear that the objectives behind the Bill are to secure the universal postal service, to ensure that Royal Mail has a bright future and to get value for money for the taxpayer. I invite the Committee to think of a commercial logic behind the position that the Opposition are seeking for us to adopt. They are effectively suggesting that we have a legally mandated fire sale, which would undermine the position of Royal Mail and value for the taxpayer.
>
> It was the hon. Member for Angus who put his finger on it. I know that he is not a supporter of the Bill, but I share his analysis of the amendments. They would play into the hands of those investors who want to get their hands on Royal Mail for a knockdown price. If there was a date by which the Government had to sell, that would be very much in the interests of those who want to get Royal Mail on the cheap, which would not be in the taxpayers' interests. I find it odd that the Opposition are trying to do that, setting artificial deadlines, seemingly picked at random, and enshrining them in primary legislation. I cannot think of anything more unwise in the sale of a publicly owned asset.

The Minister asked for the amendment to be withdrawn, which it was.

An Opposition amendment to drop Clause 1 completely from the Bill (Amendment 12) was not selected. Such an amendment would retain the current arrangements for the disposal of shares in Royal Mail under Sections 65 to 67 of the *Postal Services Act 2000* which state that, without Parliamentary approval, the Government must retain a holding (however small) in Royal Mail. However, the Committee did debate (without a vote) an Opposition amendment to introduce a new clause 2 enabling the "Government to retain majority shareholdings in Royal Mail Holdings and its relevant subsidiaries"[59]. Introducing the new clause, Shadow Minister for Business, Innovation and Skills, Nia Griffith said that:[60]

> we are proposing a new clause that would keep Royal Mail in public ownership. To be precise, we are saying that the Government must retain a majority of shareholdings in Royal Mail Holdings plc and its relevant subsidiaries.

The Shadow Minister went on to suggest that the sale of Royal Mail to a private sector company would be no guarantee that the Royal Mail would get the capital investment it needed to modernise and protect the universal service:

> A private company will not want to invest in a business burdened by a costly universal service. Private shareholders will seek to unpick that universal service; they will argue

[56] *ibid*.
[57] *ibid.*
[58] PBC Deb, 16 November 2010, c161
[59] *ibid*., c172
[60] *ibid*.

> that it is unsustainable and too costly, and that will undermine the universality of the service. Rural areas that are costly to reach will see their service decline, with fewer deliveries every week. Hooper already recommended a review of the universal service, alongside the privatisation of Royal Mail, in his most recent report.

Nia Griffith further suggested that Royal Mail already had access to capital for modernisation under the current Act:

> Specifically, it can, with the approval of the Secretary of State and the Treasury, borrow several billion pounds from the national loans fund. Given the Government's superior credit rating, those funds are available to Royal Mail at far more favourable rates than it could achieve independently, which is an important point. They would also be loaned to Royal Mail at a higher interest rate than the Government pay, thereby generating revenues for central Government.
>
> As Hooper notes in his updated review, this facility has not been used effectively to finance modernisation. Government-backed lending to Royal Mail must occur on terms that satisfy EU state aid requirements. At present, that may slow down the lending process, but there is no reason why the Government could not improve performance on that or amend the fast-track facility to provide capital to Royal Mail on commercial terms.

Public sector funding for modernisation, which had already been invested, would be wasted and not returned once privatisation proceeded. There had been no evidence collected to suggest that the public sector would not, or could not, invest in Royal Mail modernisation in the same way as a private sector company which purchased the Royal Mail:[61]

> A lot of taxpayers' money has gone in and just as we are getting to the point at which Royal Mail will become profitable, taxpayers are going to lose out because the sale will be made and it will be privatised. There will be no return to the taxpayer. Secondly, the kind of finance that I am discussing is loan financing, from which the taxpayer stands to gain, because the loan will be repaid at a commercial rate. The Government coffers, and therefore the taxpayer, will be repaid with interest. That is an important point.

Minister for Employment Relations, Consumer and Postal Affairs, Ed Davey, spoke against the new clause:[62]

> When one is going through massive structural change, there is uncertainty and risk, and I have to tell the Labour party that industries and firms faced with uncertainty and risk do not sit well in the public sector. The need for flexibility, for quick access to capital and for quick decision making is much more necessary when a company or industry is going through such structural change, and, therefore, a private owner makes much more sense for this company.

The Minister was also unsure that the public sector could provide the required capital investment[63] and said that the Royal Mail did not have the assets with which to secure borrowing:[64]

> Royal Mail's assets have effectively already been secured against the borrowings that it has already made. Given that it has a negative cash flow, the idea that a private bank would lend against future revenue prospects is a limited one. Therefore, as I said in my

61 PBC Deb, 16 November 2010, c175
62 *ibid*., c 214
63 *ibid*.
64 *ibid*., c 219

> evidence, what we need is risk capital finance—equity finance. It is simply not the case that there is some sort of debt-borrowing, get-out-of-jail-free future for Royal Mail.
>
> [...] The Royal Mail's balance sheet cannot bear any further substantial debt. It is basically maxed out on its security for loans, and it therefore needs the equity capital for which I have been arguing. Someone has to take that investment risk, particularly given the structural change and the uncertainty that the industry faces.

Clause 1 was ordered to stand, unamended, as part of the Bill. No Question on a new clause 2 was put. [65]

Ownership of the Royal Mail

Clause 2 requires the Secretary of State to report to Parliament when a decision has been made to undertake a sale of any part of Royal Mail (either by the Secretary of State or another person such as Royal Mail Holdings plc or RMG). The report must include the type of disposal to be undertaken (for example an Initial Public Offering) and the timescale for the process.

Debate on Clause 2 in the Committee was mainly focused on a substantial Opposition amendment (Amendment 16) which, Gordon Banks, Shadow Minister for Business, Innovation and Skills, suggested would, amongst other things:[66]

- Secure "the placing of at least one representative from those directly employed by the privatised Royal Mail or its successors on the board of the new company";
- Require the HQ of the new body to be located in the UK: "in case Royal Mail is purchased by an overseas company that wants to incorporate the headquarters of the newly privatised Royal Mail into, say, its own HQ elsewhere in Europe or, indeed, further afield";
- Restricts the ability of the new body to move the HQ out of the UK, once it has been established without the approval of the Secretary of State; and
- Undertake "a consultation exercise with those involved in the provision of postal services in the UK be undertaken where the details of the proposal can be made clearly to those with an interest in the provision of services, and in a way that allows a valuable dialogue to be established in the consultation process".

Responding to the proposed amendments to Clause 2, the Minister for Postal Affairs, Ed Davey, suggested that the amendments would:[67]

> first, reduce the Government's flexibility to achieve value for money for the taxpayer from a disposal; secondly, further delay action being taken to address the challenges faced by Royal Mail and the postal market; and thirdly, put in place additional barriers to a sale of shares. For all those reasons, we cannot accept them.
>
> [...] on amendment 16, which seeks to include a plethora of criteria and conditions that would need to be met before any disposal could take place. It surprised me that hon. Members believe that such conditions should include a new Bill, in addition to this one, before there can be a disposal. I thought that we were debating the issue of Royal Mail and private capital, and that we did not want to delay such consideration even further. I

[65] *ibid*., c 225
[66] PBC Deb, 18 November 2010, cc175-240
[67] *ibid*., c 264

> can see absolutely no reason for a Government to introduce two successive pieces of legislation to sell a company. That would be a complete waste of parliamentary time and would delay the injection of private capital and disciplines that we have all heard Royal Mail so desperately needs.

Amendment 16 was voted on, and negatived, while all other amendments were withdrawn. No specific debate on the stand part of Clause 2 took place due to the length of the previous debate on the amendments. Clause 2 was then ordered to stand as part of the Bill.[68]

Employee share scheme

Clause 3 requires that the Secretary of State must ensure that arrangements have been made for the establishment of an employee share scheme before the first relevant disposal is made in a Royal Mail company (as defined in Clause 2). The proportion of the company owned by, or on behalf of, the share scheme, must have been at least 10% at some point prior to it leaving Crown hands completely.

Opposition amendments to Clause 3 were aimed at: increasing the proportion of Royal Mail to be included in an employee share scheme, which should rise from the 10% proposed in Clause 3 to "at least 20% of the company that is not owned by the Crown"[69]; an "equitable division of shares and the dividends that accrue from them. The amendment proposed that equal dividends must be paid to all participants"[70]; and that there should be employee representation on the Board of the company running the scheme.[71] None of the amendments succeeded and Clause 3 stands as part of the Bill.

Ownership of the Post Office

Clause 4 prevents the sale of the Post Office unless it is to a "relevant mutual" (see Clause 7). The Clause also prohibits the 'on-sale' or transfer of shares from the relevant mutual to anybody other than another relevant mutual or the Crown.

Opposition amendments to Clause 4 mirrored the amendments proposed for a privatised Royal Mail Group in Clause 2 but here for a legally separated Post Office Ltd. Four new clauses were also proposed including two on a "Guarantee of inter-business agreement" and two on reporting procedures.[72] None of the amendments were agreed and Clause 4 was ordered to stand.

Royal Mail Pension Plan (RMPP)

Part 2 of the Bill (Clauses 15 to 25) provides for the transfer of historic pension liabilities to government and for a new scheme (which the Government proposes should be a pay-as-you-go public service scheme) to be set up to meet those liabilities. The Bill provides for assets to be transferred from the RMPP to government. The Government proposes to leave RMPP with sufficient assets to meet its liabilities. RMG will be expected to bear the future cost of its own pension obligations for its employees.

Transfer of qualifying accrued rights to a new public scheme

Clause 16 gives the Secretary of State power to establish a new scheme for pensionable service in the RMPP up to the "qualifying time" in respect of "qualifying members" and to transfer "qualifying accrued rights" into it.[73]

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68 *ibid*., c292
69 PBC Deb, 23 November 2010, c297
70 *ibid.* , c299
71 *ibid.* , c321
72 *ibid.* , cc328-335
73 *Postal Services Bill 2010-11* – Explanatory Notes Bill 78-EN, para 86-9

Shadow Minister for Business, Innovation and Skills, Gordon Banks, argued that it should not be possible for defined benefits (pensions based on salaries and service) to be converted into money purchase benefits (which provide pensions based on the value of a member's pot on retirement).[74] Ed Davey explained that Clause 19 would prevent this:

> In transferring rights into the new public scheme, the protection in clause 19(2) would apply. [...] That protection means a member's "relevant pensions provision" must be at least as good in all material respects after the transfer as it was before. That obligation on the Secretary of State would prevent the conversion of a defined benefit into a money purchase benefit. The protection in clause 19(6) - to ensure that rights in the new scheme are protected - would be engaged in relation to any subsequent amendment of the new public scheme. That means that member consent would be required for any conversion of a defined benefit into a money purchase benefit, which provides members with the same protection as they would have received under the Royal Mail pension plan.[75]

Furthermore, the new public service scheme, as a "pay as you go" scheme would have no fund and would therefore be unable to provide money purchase benefits.[76]

Shadow Minister for Business, Innovation and Skills, Nia Griffith, argued that a well-prepared communication programme would be needed to ensure RMPP members were fully informed of what changes would mean for them.[77] The Minister said the Government was "completely committed to the notion that members should be made fully aware of any changes made to their pension arrangements".[78] The Government would work with trustees and member representatives on the best way to provide information to members. No final decision had been made, but it was likely that the Government would look, at least initially, to give the contract for the administration of the new scheme to the existing RMPP administrators.[79]

Division of the RMPP into different sections

Clause 17 allows the Secretary of State by Order to divide the RMPP into sections. Gordon Banks moved an amendment that would mean the consent of the trustees would be required before an Order was made: [80]

> The trustee, not the Secretary of State, has to manage the scheme after the sectionalisation. Surely, the trustee, and its actuary, ought to be responsible for the division, and if not, it must be at least asked for its consent to the division.

In response, Mr Davey set out the Government's intentions regarding sectionalisation:[81]

> Clause 17 will allow the Government to create a separate section in the Royal Mail pension plan for Post Office Ltd. The Post Office will then become the sponsoring employer for its own section. We intend to make the two sections—the Post Office section and the Royal Mail section—completely separate. Post Office Ltd will have no exposure to the Royal Mail section and vice versa. However, the existing trustees will remain responsible for both Post Office and Royal Mail sections of the Royal Mail pension plan.

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74 PBC Deb, 25 November 2010, c422
75 *ibid.*, c423
76 *ibid.*, c424
77 *ibid.*, c426
78 *ibid.*, c430
79 *ibid.*, c431
80 *ibid.*, c435
81 *ibid.*, c436

> Subject to state aid approval, we intend Post Office members to be treated on an equivalent basis to Royal Mail members. That means that the historical benefits that Post Office members have, like Royal Mail members, will be transferred to the new public scheme. The member protection that applies under clause 19 will apply equally to Post Office members as to Royal Mail members. That protection will also apply to any order made under clause 17. In other words, any order to divide the Royal Mail pension plan into sections must be done in such a way that it does not leave members materially worse off after the order is made than they were before.

He explained that the Government would “work hand in glove with the trustees” in developing the detail of the proposals. However, it would not be appropriate to require individual trustees of the RMPP to make a decision in relation to an Order proposed by the Secretary of State. At the request of the trustees, provision had been included in the Bill to ensure that “once the changes were made, all their duties would have been fully discharged.” There was a danger that the proposed amendment would “go in the direction of putting responsibilities and duties back on the trustees”.[82]

Mr Banks was unconvinced that his amendment would not be in the interests of scheme members and pushed it to a vote. It was defeated on division by 10 votes to 7.[83]

Clause 18 gives the Secretary of State power to amend the rules of the RMPP, in connection with orders under Clauses 16 and 17. Ed Davey explained why these powers were needed:[84]

> The rules of the RMPP may need amending to make it clear that the liabilities for paying the pensions that transfer to the new public scheme no longer rest with the RMPP. It is important that we have clarity on the matter, and we may need to make amendments to ensure that. Another example of that is the creation of a new section for Post Office employees, which will require a number of changes to the RMPP in order to address the funding, investment and governance arrangements for the new Post Office section. The whole purpose of clause 18 is simply to make sensible amendments to the RMPP rules to give effect to other clauses in this part.

Nia Griffith raised a number of issues about how this would work: would the Secretary of State be able to make an Order winding up the RMPP?; should the trustees’ consent should be required for certain decisions?; and should there be a requirement to consult the trade unions?[85]

In response, the Minister explained that making an order allowing the RMPP to be wound up more easily would fall foul of the protection in Clause 19 against members’ benefits being adversely affected. In any case, it would not be appropriate given that it was the Government’s intention to leave Royal Mail with a more manageable scheme.[86] He did not think that requiring the trustees to provide their consent to amendments under Clause 18 would increase protection for members.[87] The Secretary of State’s power to make amendments was in any case constrained by the protection in Clause 19 against RMPP members’ benefits being adversely affected.[88] The exact amount of assets to be transferred would be decided following a valuation. The Government estimated that: [89]

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82 *ibid.*, c436-7
83 *ibid.*, c438
84 PBC Deb, 30 November 2010, c445
85 *ibid.*, c441-4
86 *ibid.*, c445
87 *ibid.*, c446
88 *ibid.*
89 *ibid.*, c447

> [...] around £27.5 billion of assets will be transferred to the Government, compared with the liabilities of approximately £35.9 billion, meaning that the Government will absorb a deficit of £8.4 billion. We intend that only liabilities relating to the salary link –the real growth of salaries that build up after the cut-off date will remain with the RMPP. We estimate that that will amount to approximately £1.5 billion of liabilities in the RMPP, at the point at which the Government will implement the measures in part 2. Subject to state aid clearance, we intend to fully fund the liabilities remaining with the RMPP, so that it will also retain £1.5 billion of assets. Before any assets are transferred, a valuation of the RMPP will be made. The valuation exercise will follow standard actuarial principles and reflect the assumptions agreed between the trustees and the Royal Mail in the recently agreed March 2009 triennial valuation.

Mr Davey recognised the importance of leaving the RMPP trustees with assets that would reflect its "future investment strategy".[90]

Given the central role played by the trustees in representing the interests of RMPP members, he did not think it necessary for the Bill to include provision requiring the Secretary of State to consult more widely.[91]

Clause 19 provides protection against RMPP members' benefits being adversely affected. The Minister provided "words of reassurance" regarding the arrangements that would be put in place:

> I would like to make it clear that Royal Mail pension plan pensioners currently receiving pension payments will not see any reduction in their pension; I want to be absolutely clear that that message has got across and any fears or worries are dispelled. Thanks to the protection provided by clause 19, which we will, no doubt, come on to in due course, their pension entitlements will be the same, but will be paid from a different source—the new public scheme.
>
> Secondly, the accrued rights of members who left the service before retirement will be the same as when they left service, and they will receive the same amount of revaluation—that is, increases to account for inflation—before payment. As with the pensioners, at retirement their pension will be paid from a different source: the new public scheme.
>
> Thirdly, for active members still employed by Royal Mail, there will be no reduction in the rights that they have already built up. For those members, the rights accrued up to the cut-off date will become payable from the new public scheme as though the member had left service on the cut-off date. The remainder, including any increases attributable to real wage growth, will be paid by the Royal Mail Pension Plan. In other words, the total amount of pension payable to a member for service built up prior to the cut-off date will be the same, but it will simply be funded from two different sources.[92]

Nia Griffith asked whether the Minister had considered clarifying the definition of "relevant pension provision" to ensure that the protection in the clause referred both to the RMPP and the new public scheme. This would be important for active scheme members who would receive benefits from both schemes. She asked:

90 *ibid.*
91 *ibid.*, c448
92 PBC Deb, 25 November 2010, c430

> Why should pensions or other benefits payable not include benefits payable in the event of early retirement, on the grounds of ill health, a contingency or otherwise, or on the exercise of a discretion by the trustee of the RMPP in accordance with its rules? [93]

Ed Davey explained that the definition of "relevant pensions provision" included:

> discretionary benefits and survivor benefits, such as a widow or widower's pension, which is payable on the death of a member. It also includes provision for early retirement, in accordance with the rules of the scheme, including retirement on the grounds of ill health. [94]

It also included "any increases that active members may receive in respect of past accrual, as a result of their pensionable salary growing in the future".[95] Any agreement between Royal Mail and the Communication Workers' Union that was not within the RMPP rules would remain an issue for Royal Mail.[96]

The purpose of Subclause 19(4) was to "make it clear that although the Secretary of State has to ensure that members' pensions are protected", he was not bound to replicate any provision which turned out to be unlawful given developments in case law or EU legislation.[97]

Nia Griffith argued that future service rights could be at risk in two ways post-privatisation:[98]

> First the new private employer could go bust or run into financial difficulties. Secondly, if the service rights are transferred, or transfer voluntarily, from one Royal Mail company to another, they could lose out financially.

She moved a new clause that would have the effect of providing existing RMPP members with a form of protection modelled on that provided to employees of the railway and electricity industries on privatisation:[99]

> First they were given an unrestricted right to remain in their existing scheme or an equivalent one if they transferred from one electricity or railway employer with no break in continuity of employment. Secondly, they were given protection so that their future service rights would be at least as good as the benefits provided by the pre-privatisation of the electricity supply and British Rail schemes.

Although the Labour Government had argued, during debate on the *Postal Services Bill 2008-09*, that such protection was unnecessary, the situation with the current Bill was different:[100]

> Under the previous Bill, the employer would remain the same, and all the employers would remain at least partly owned by the state, whereas in the case of the railways, employees were transferred to new employers. Under the current Bill, employees may have new employers, and there is no guarantee that the new employers will remain associated with, or still be in, the RMPP. Nor is there any provision to ensure that members who transfer or who are transferred, within the industry will be able to transfer pension rights without loss of benefit.

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93 PBC Deb, 30 November 2010, c450
94 *ibid.*, c453
95 *ibid.*
96 *ibid.*, c454
97 *ibid.*, cc453-4
98 *ibid.*, c457
99 *ibid.*, c458; This is discussed in more detail in Library Standard Note SN/BT 3109 *Railways Pension Scheme*
100 *ibid.*, c459

In response, Ed Davey argued that providing this level of protection would go beyond the norm, and would be more than was currently available to RMPP members:[101]

> In particular, the new clause would allow the Secretary of State to make regulations that would, first, wholly protect members' rights in the event of the RMPP partially or fully winding up; secondly, restrict the ability of the RMPP to reduce benefits, whether related to past or future accruals, or to increase contributions paid by members; and, thirdly, to restrict the effects that any transfer of employment might have on a member's continuing pension arrangements.

It was right that decisions on future benefits should be an operational matter for the Royal Mail board:[102]

> I cannot agree that it is right to constrain future pension arrangements agreed between a sponsoring employer and the trustees of the scheme. That is currently an operational matter for the Royal Mail board, and it must remain so in the future for the Royal Mail section of the plan.

Asked about the price indexation of pension benefits, the Minister explained that the older sections of the RMPP (A and B) were closely related to public sector schemes. Their rules meant they would "automatically track" the move to the CPI for public sector schemes. The rules of section C provided for benefits to increase in line with the RPI, capped at 5%. Both of these provisions were unaffected by the Bill.[103]

As regards the position of active scheme members at the time the two schemes are split, who will therefore receive part of their benefits from the new public service scheme and part from the RMPP, the aim was to provide a seamless service:[104]

> Many schemes have changed the way in which benefits accrue over time. [...] This means that in many such schemes, there are multiple blocks of separate benefits that need to be calculated and aggregated before payment. That is effectively how we intend the process to work for active members of the RMPP. We intend that members will receive one cheque, albeit in respect of separate blocks of benefit.

Nia Griffith said she had "some reservations and some areas are still difficult to cover". However, in view of the full debate that had taken place, she would not press the matter.[105]

Taxation

Clause 22 deals with taxation issues. Pension tax legislation allows schemes to offer members a tax-free lump sum of up to 25% when they first take their pension.[106] Nia Griffith asked what could be done to ensure that the new public sector scheme and the RMPP were treated as a single scheme for the purposes of commutation, allowing a larger lump sum than if the schemes were treated separately.[107]

The Minister explained that her proposed amendment was "unnecessary".[108] Concerns had been raised in debate on the 2009 Bill that "splitting benefits between the new public scheme and the RMPP would mean that some members would not be able to take as much of their

101 *ibid.*, c460
102 *ibid.*, c461
103 *ibid.*, c462
104 *ibid.*
105 *ibid.*, c464
106 *Finance Act 2004, Part 4;* For an overview, see HMRC leaflet, *Pension tax and you*, (March 2010)
107 PBC Deb, 30 November 2010, c465
108 *ibid.*

additional voluntary contributions in a cash lump sum" as would have been the case had all their rights remained in the RMPP. The Government had responded to these concerns, adding provision to the current Bill to allow for the transfer of money purchase benefits from the RMPP into the new public scheme:[109]

> That is designed to allow RMPP members who have made additional money purchase of AVCs to transfer a portion into the new Government scheme immediately prior to retirement to ensure that all the relevant rights are contained in the same pot for tax purposes.

Regulation of postal services

Part 3 of the Bill (Clauses 26 to 65) provides for the proposed regulatory arrangements for postal services, including the transfer of powers from Postcomm to Ofcom, provides for the implementation of the amended *Postal Services Directive (97/67/EC)* and abolishes the licensing requirements currently contained in the *Postal Services Act 2000*. No amendments to this part of the Bill were agreed.

Special Administration Regime

Part 4 of the Bill (Clauses 66 to 86) makes provision for a "special administration regime" should the universal service be threatened by a universal service provider being deemed to be at risk of entering insolvency proceedings. Should such a case arise, this part of the Bill provides for a "postal administration order" to be made, which, amongst other things, provides for the conduct of a postal administration, including the objectives and conduct of the postal administrator.

Amendments to Clause 80

Government amendments to **Clause 80** were the only amendments to the Bill agreed during the Public Bill Committee Stage. Clause 80 sets out the regulatory powers available to the Secretary of State during a postal administration. Under this clause, the Secretary of State can make an order to "modify" the "universal postal order" as made by Ofcom[110] (see Clause 29) once a "postal administration order"[111] has been made (see Clause 66). The Clause also provides for the Secretary of State to amend the "minimum requirements" (see Clause 30) for the universal postal service by order.[112]

The Government amendments to Subclause 80(2), Subclause 80(5) and the insertion of a new Subclause 80(13), limit the time during which the Secretary of State has the power to "modify" the universal service and its minimum requirements as the time a Universal Service Provider (USP) is subject to a "postal administration order". In Committee, the Minister for Culture, Communications and Creative Industries, Ed Vaizey, described the amendments as "minor and technical" and "only serve to provide legal clarity to the clear policy intentions of the clause":[113]

> [...] the provisions in part 4 of the Bill are very much reserve provisions. It is our hope and expectation that they will never be used. It is, however, sensible for the Government to prepare for future scenarios, even though we consider them remote. If a special administration scenario were ever to materialise, it would be crucial to ensure

[109] *ibid.*, c464

[110] **Clause 29** provides that Ofcom must, by order - the "universal postal service order" - set out a description of the services (and the standards of those services) that it considers must be provided as a universal postal service.

[111] A "postal administration order" is the provision for special arrangements should a universal service provider (USP) be at risk of entering insolvency proceedings. In such circumstances, the Government, or Ofcom with the consent of the Government, can apply to the court for the "postal administration order" (see Clause 66).

[112] **Clause 30** sets out the minimum services that must be included in the universal postal service.

[113] PBC Deb, 9 December 2010, c730

> that—if required—swift and decisive regulatory action can be taken to bring an end to the administration and secure the ongoing provision of the universal postal service. Clause 80 provides for that. It enables the Secretary of State to modify the universal postal service order made by Ofcom under proposed section 29 to amend proposed section 30, which refers to the minimum requirements, and to revoke or modify any regulatory conditions that the Secretary of State considers appropriate for, or in connection with, achieving the objective of the postal administration. Before modifying the universal postal service order or modifying and revoking regulatory conditions, the Secretary of State must consult Ofcom and other interested parties as appropriate. Any order to amend proposed section 30 is subject to the restrictions contained within the European directive, which provide an absolute backstop in terms of minimum service.

The Minister went on to explain that:

> The clause without the amendments, when read in connection with other associated clauses in part 4, created circularity that would in effect render the clause largely meaningless. The amendments solve this by removing the references to
>
> "for, or in connection with, achieving the objective of the postal administration"
>
> from the powers to modify the universal postal service order and the power to amend proposed section 30. The amendments now provide that the powers are effectively sunsetted when the postal administration order ceases to be in force.

All Government amendments were agreed and Clause 80, as amended, stands as part of the Bill.[114]

[114] *ibid.*, c734

3.3 Appendix: Members of the Public Bill Committee

Chairs:
Mr David Amess
Miss Anne Begg
Mr Jim Hood

Members:
Banks, Gordon (*Ochil and South Perthshire*) (Lab)
Blenkinsop, Tom (*Middlesbrough South and East Cleveland*) (Lab)
Collins, Damian (*Folkestone and Hythe*) (Con)
Davey, Mr Edward (*Parliamentary Under-Secretary of State for Business, Innovation and Skills*)
Fuller, Richard (*Bedford*) (Con)
Griffith, Nia (*Llanelli*) (Lab)
Harris, Rebecca (*Castle Point*) (Con)
McClymont, Gregg (*Cumbernauld, Kilsyth and Kirkintilloch East*) (Lab)
Morrice, Graeme (*Livingston*) (Lab)
Newmark, Mr Brooks (*Lord Commissioner of Her Majesty's Treasury*)
Patel, Priti (*Witham*) (Con)
Stephenson, Andrew (*Pendle*) (Con)
Swinson, Jo (*East Dunbartonshire*) (LD)
Turner, Karl (*Kingston upon Hull East*) (Lab)
Vaizey, Mr Edward (*Parliamentary Under-Secretary of State for Culture, Olympics, Media and Spor*t)
Walker, Mr Robin (*Worcester*) (Con)
Weir, Mr Mike (*Angus*) (SNP)
Wright, David (*Telford*) (Lab)